

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LABOUR APPLICATION NO. 04 OF 2021

(Arising from Labour No. 2 of 2018)

JUNIOR CONSTRUCTION COMPANY LTD.APPLICANT

VERSUS

REVOCATUS BEBILE.....RESPONDENT

RULING

01/10/2021 & 24/12/2021

NGIGWANA, J.

In this application, the applicant at hand seeks this court to extend time for the applicant to file notice of appeal to the Court of Appeal against the decision in Labour Revision No. 02 of 2018 before Hon. Kairo, J. (as she then was) delivered on 30/11/2020.

The said prayer is sought through chamber summons supported by the Affidavit of the Applicant one Suleiman Masoud Suleiman made under the provisions of Rule 24(1), 24(2) (a), (b), (c), (d), 24(3) (a), (b), (c), & (d) and 11, (b) and Rule 55 (1) and (2) and 56(1) & (3) of the Labour Court Rules GN. 106 of 2007 and Section 91(3) of the employment and Labour Relation Act No. 6 of 2004 R: E 2019 4 Section 11(1) of the Appellants Jurisdiction Act [Cap. 141 R: E 2019].

At the hearing, the learned Advocate Mashauri stood for the applicant while Mr. Revocatus Bebile was peddling his own canoe.

To begin with, Advocate Mashauri amplified on the reason for delay which was averred on paragraph No. 2 and 3 in the applicant affidavit which was adopted in this hearing.

He therefore substantiated that the judgment was delivered via Video Conference on 30/11/2020 in the absence of the applicant but in the presence of his Advocate who represented the Applicant at the High Court. That on 03/12/2020 after the judgment was delivered, the Applicant had already the air ticket on hand where he was to travel to Oman and that due to communication barrier, unfortunately his counsel did not communicate to him on the outcome of the case.

That on 03/12/2020 the applicant traveled from Tanzania to Oman and did not come back on time due to outbreak of corona virus as a result he returned on 23/01/2021. That after his arrival to Tanzania he was awoken by the SMS which was sent to him (annexure JCCL1) on 28.Jan. 2021 which informed him that the judgment of this court which was delivered on 30/11/2020.

That because his judgment was delivered through video conference, he started making a follow up to the copy of judgment and thus this application was filed on 05/02/2021. The learned counsel submitted that the advocate was not negligent neither the applicant. He prays for the grant of this Application for the interest of justice.

He also added that there are illegalities in the judgment to be impugned as to whether there was unfair termination.

He stressed that illegalities is the sufficient reason for extension of time. He cited the famous case of **secretary Ministry of Defence V. National Security VD. Valambia** [1992] TLR 182 where the court held that an illegality is one of the reasons to extend time.

Submitting in reply, the respondent was brief that the applicant had legal representation throughout the hearing of the appeal subject to impunity hence it is not correct to be said that he was not aware of the outcome of his case. That when the judgment was delivered on 30/11/2020, the Applicant who is a Tanzanian was in Tanzania and he later on traveled on 03/12/2020 that is 4 days after the judgment was delivered. The respondent vigorously refuted that the issue that there was corona outbreak is irrelevant. That he would have left instructions or would have made communications with his lawyer through WhatsApp or by E-mail.

He stressed that it seems that the applicant did not opt to appeal. And that is deploying delaying techniques. He ended by praying this application to be dismissed.

In a rejoinder submission, the learned counsel dismissed the argument that the applicant is deploying delaying technique instead, he submitted that any aggrieved party has a right to appeal. He further conceded the issue that the Applicant was fully represented throughout the hearing and that the applicant is a Tanzanian but of Arabic origin. However, he submitted that when the judgment was delivered, the Advocate had no full instructions from his client whether he had intention to appeal or not.

It was therefore the end of that tug of war. Now the wanting question is to answer whether sufficient cause to warrant the grant of extension of time to file a notice of appeal to Court of Appeal has been demonstrated or otherwise.

It is trite that the extension of time like in this matter at hand is within the domain of the court to grant or to refuse. Of importance is for the court to exercise such discretion so judiciously and indeed after taking due diligence to see if the applicant has managed to demonstrate sufficient causes for delay.

On my part, I have considered the Affidavits and viva voce submissions of both parties. It is clear and no dispute that when the judgment was delivered on 30/11/2020 the applicant was represented by the legal counsel and was indeed in Tanzania. The same counsel, Mr. Mashuri who is representing the applicant herein, the record has it that he was the one handling the appeal case up to the judgment delivery. It is a common ground that since the advocate had instruction to represent the applicant, he was duty bound to inform him the outcome of the judgment so that his client could have taken necessary and prompt steps including his right to appeal or file notice within time given the facts that he stayed in Tanzania almost 4 days before he travelled to Oman.

This court is not ready to accept the empty assertion that the applicant being in Tanzania, his phones were not reachable in the given circumstances where the learned counsel himself had informed this court

that the applicant is the Director of the company and any company legally qualified always has permanent address and place of establishment which the Advocate is presumed to know and therefore this court takes judicial notice that he ought to have known where the company his client is established so as to notify him the outcome of his case. He did not therefore exercise due diligence to his detriment.

I am inclined to agree with the respondent and as well equally this court views such act of an Advocate as laxity and negligence which makes no sufficient cause for extension of time.

The applicant had also hinged on the issue of illegality in the impugned judgment as sufficient cause to extend time. I am alive that illegality if apparent in the impugned judgment, may warrant extension of time. But with due respect to the Applicant's counsel, I have not been able to see the complained illegalities in the impugned judgment. The issue that the appellate court concurred with the trial CMA that there was unfair termination after ruling that the procedure for retrenchment was not followed was the issue of evidence and thus cannot be termed as illegality in the impugned decision.

In the upshot, this application lacks merit as the applicant has failed to demonstrate sufficient cause for delay and hence bound to be dismissed as I here by do. Application dismissed.

No order as to cost entered.

It is so ordered.

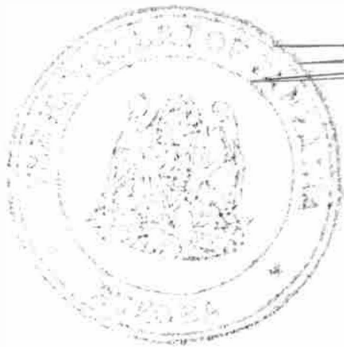



E. L. NGIGWANA

JUDGE

24/12/2021

Ruling delivered this 24th day of December, 2021.




E. L. NGIGWANA

JUDGE

24/12/2021